

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4777 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

PRAVIN JAGANNATH TRIPATHI

Versus

STATE OF GUJARAT

Appearance:

MR BR PARIKH for Petitioner

MS VIDHATRIBEN K PAREKH, AGP for Respondents.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 13/06/2001

ORAL JUDGEMENT

This petition has been filed for a direction to the respondents to finalize pension case of the petitioner within a time limit and to pay the amount of death-cum-retirement gratuity of Rs.5000/- and also the amount of commutation of pension together with interest at the commercial rate within stipulated time.

2. The petitioner was working as a Director of Medical Services, Employees State Insurance Scheme, State of Gujarat and he retired on attaining superannuation age from 30-12-1998 vide order dated 20-12-1988. He addressed a letter dated 8-5-1989 to the Additional Secretary, Health and Family Welfare Department, to look into the matter personally and to issue necessary orders regarding finalization of the pension of the petitioner. Thereafter, the Government issued the order dated 1-6-1989 regarding grant of provisional pension to the petitioner on the ground that finalization of pension case of the petitioner was under correspondence and there was some preliminary inquiry which was being initiated against the petitioner. The petitioner was granted provisional pension of Rs.2317-00 p.m. and he was paid gratuity after withholding Rs.5000/- from gratuity amount payable to him. However, benefit of pension being calculated at Rs.99,865-00 which was duly applied and therefore the same was not granted. Total amount of more than Rs.1 lac was withheld by the respondents. The petitioner sent several reminders to the Additional Secretary, Health and Family Welfare Department, State of Gujarat. for finalizing his case with regard to pension. The petitioner received communication dated 27-2-1991 from the Deputy Secretary, Health and Family Welfare Department, informing him that he was working as Director of Medical Services, Employees State Insurance Scheme. One Dr. R.K. Joshi filed a Criminal Case No.2696/85 against the petitioner in the Criminal Court for which the petitioner attended the Court on various adjourned dates in the year 1988 and the petitioner had not taken any leave from the office for that purpose and also claimed T.A. Bill on five occasions. The petitioner was required to submit his explanation and accordingly he submitted his explanation vide letter dated 2-4-1991. It was suggested by the petitioner that said Dr. Joshi had inimical terms with the petitioner and after scrutiny of the case papers the Medical Services Committee recommended to relieve Dr. Joshi as a penal doctor and the petitioner implemented the decision of the Medical Services Committee and vide order dated 6-12-1985 the services of Dr. Joshi were terminated by the petitioner. Hence, Dr. Joshi filed fictitious criminal complaint against the petitioner. The petitioner also pointed in his explanation that in order to pressurize the him not to take action against Dr. Joshi. Thus, Dr. Joshi was in the habit of filing criminal case against them. Since, the criminal case was a result of discharge of his duty, the Government had granted legal assistance of the Government Pleader as well as other facilities incidental

thereto. The petitioner had not committed any irregularities. Thereafter, Dr. Joshi had withdrawn the aforesaid criminal case filed against the petitioner. The petitioner has stated that he had already retired since 27 months and his pension case was to be finalized. It is also stated that there was neither any enquiry initiated against him nor any reply was given to the petitioner by the Government and he is being deprived of the amount of his commutation of pension and withheld gratuity of Rs.5000/- and that action of the respondents is arbitrary, illegal and in breach of the provisions of Article 14 and 16 of the Constitution of India.

3. The affidavit-in-reply has been filed in this case, wherein it is stated that various complaints were received against the petitioner and one of such complaints was received from Dr. Joshi for illegally using the government vehicle. The statements of the witnesses recorded and logbook of the said vehicle was scrutinized and then preliminary inquiry was conducted on such allegations. There was a criminal case against the petitioner pending in Criminal Court at Nadiad and the petitioner attended hearing of the said criminal case pending before the Criminal Court at Nadiad without submitting leave report and also used the government vehicle for the said purpose and also prepared forged T.A. Bill. After conducting the preliminary inquiry Health and Family Welfare Department wrote a letter along with the report to the Vigilance Commission and it was proposed to drop the inquiry against the petitioner. Since, the investigation was pending and since disciplinary proceeding was contemplated against the petitioner there was delay in making payment of pension to the petitioner. The Government passed the order withholding the amount of gratuity of Rs.5,000/- and to pay Rs.71,450/- to the petitioner on 1-6-1969. Thereafter, the Government decided to drop the inquiry and vide order dated 23.11.1991 it was decided to pay Rs.5000/- towards gratuity and then it was further decided to pay interest of the amount which was withheld by the order dated 5.8.92. The petitioner has already been paid the retirement benefits and the Government is not responsible for any delay. Thus, the petitioner was paid amount of Rs.5000/- along with interest and nothing is required to be paid by the Government to the petitioner.

4. The petitioner has also filed rejoinder affidavit.

5. The contention of the learned counsel for the petitioner is that the amount of commutation of pension

was delayed and hence the petitioner is entitled to get interest @ 18 p.a.. on the amount from the respondents. It is not in dispute that the required amount towards retirement dues has already been paid to the petitioner. Only the dispute is in respect of interest on the delayed amount.

6. I have carefully considered the contentions of the learned counsel for the petitioner and perused the relevant papers on record of this case. It appears from the petition as well as rejoinder affidavit that some complaint was received against the petitioner and for that preliminary inquiry was conducted against him. In any case preliminary inquiry is conducted the department concerned is justified to withhold the amount of pension till finalization of the preliminary inquiry. The aforesaid preliminary inquiry was dropped and required amount of Rs.5000/- towards gratuity together with interest was paid to the petitioner by the respondents.

7. It appears that some delay has been caused in making payment to the petitioner after the preliminary inquiry was dropped. For administrative reasons, the function of the Government moves from one table to another table and therefore it cannot be said that there was delay for which the petitioner is entitled to get interest as claimed by him in the present petition. However, this Court has passed the orders for making payment of the amount of pension and gratuity and the case of the petitioner was settled and the payment of required amount of Rs.5000/- together with interest has been made to the petitioner. The learned counsel for the petitioner pointed that the amount of interest has not been paid on the amount of Rs.5000/- as mentioned in the affidavit-in-reply. I do not rely upon the bare statement of the learned counsel for the petitioner that the petitioner was not given interest on the amount of Rs.5000/-. Therefore, the petitioner is not entitled to get any interest on the delayed amount as claimed in the present petition.

8. I do not find any merit in this petition. Therefore, this petition is liable to be dismissed. Accordingly, this petition is dismissed. Rule is discharged with no order as to costs. Interim relief, if any, stands vacated.

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/JVSatwara/